



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Agriculture

- ☒ Preproposal Statement of Inquiry was filed as WSR 05-11-034; or
☐ Expedited Rule Making--Proposed notice was filed as WSR; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR
☐ Continuance of WSR

Title of rule and other identifying information: (Describe Subject) The department is proposing the following amendments to chapter 16-228 WAC (General Pesticide Rules) that affect the application of pesticides near schools, hospitals, nursing homes, adult and child day care centers:

- Adding the definition of "responsible person" to WAC 16-228-1010;
- Modifying the definition of "fumigant" in WAC 16-228-1010; and
- Adding a new section, 16-228-1221, "Must an applicator notify schools, hospitals, nursing homes and day care centers prior to an application of certain pesticides?" Requires an applicator to provide notification of application for certain applications of specified pesticides near schools, hospitals, nursing homes and adult and child day care centers.

Hearing location(s):

See "Public Hearing" attachment

Date: _____ Time: _____

Submit written comments to:

Name: Dannie McQueen
Address: Washington State Department of Agriculture
PO Box 42560, Olympia, WA 98504-2560
e-mail dmcqueen@agr.wa.gov
fax (360) 902-2093 by (date) November 15, 2005

Assistance for persons with disabilities: Contact

Laurie Mauerman by September 21, 2005

TTY (360) 902-1996

Date of intended adoption: November 29, 2005

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed amendments result from pesticide stakeholders expressing concerns to the department that those parts of chapter 16-228 WAC regulating airblast applications need to be more restrictive. The proposed amendments:
Add notification requirements for specified applications of "Danger/Poison" pesticides near schools, hospitals, nursing homes and adult and child day care centers.
Add a definition of "responsible person" to WAC 16-228-1010
Modify the definition of "fumigant" to be consistent with RCW 17.21.020(20); and
Establish a mechanism to reduce the possibility that sensitive human populations will accidentally be exposed to pesticides as a result of pesticide drift.

Reasons supporting proposal: The department obtained stakeholder comments regarding the need to modify WAC 16-228-1220(4) so it would be more restrictive. A committee of interested parties worked with the department to develop proposed rule amendments. Although it does not represent a consensus opinion of the committee, the new section 16-228-1221 is the final result of the committee's effort.

Statutory authority for adoption: RCW 17.21.030(1)(a) and chapter 34.05 RCW**Statute being implemented:** RCW 17.21.030(1)(a)**Is rule necessary because of a:**

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

DATE September 6, 2005

NAME Bob Arrington

SIGNATURE

TITLE Assistant Director

CODE REVISER USE ONLYCODE REVISER'S OFFICE
STATE OF WASHINGTON
FILED

SEP 6 2005

TIME

WSR

AM
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(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

The proposed rule language was a compromise based upon the work of a representative stakeholder committee. The department is prevented from proposing some additional airblast restrictions requested by some committee members because those restrictions exceed the department's statutory authority. Only the Legislature has the authority to amend chapter 17.21 RCW.

Name of proponent: (person or organization) Washington State Department of Agriculture

- ☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting.....Ann Wick	1111 Washington Street, Olympia, WA	(360) 902-2051
Implementation...Cliff Weed	1111 Washington Street, Olympia, WA	(360) 902-2036
Enforcement.....Cliff Weed	1111 Washington Street, Olympia, WA	(360) 902-2036

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared. RCW 19.85.030(1)(a) requires the department to prepare a Small Business Economic Impact Statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic impact of the proposed amendments and concluded that the cost imposed by the notification requirements in WAC 16-228-1221 are "not more than minor" and do not have a disproportionate impact on small businesses, therefore, a formal SBEIS is not required. Affected sites (schools, hospitals, nursing homes and adult and child day care centers) are not required to take any action if they choose not to. However, by following the notification requirements in WAC 16-228-1221, affected sites could benefit from substantial cost savings by avoiding possible pesticide exposure incidents.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain: The Washington State Department of Agriculture is not a listed agency under RCW 34.05.328(5)(a)(i).

The Washington State Department of Agriculture
CR-102 Attachment – Public Hearing Locations and Times

The public hearing dates, times and locations for the proposed amendments to chapter 16-228 WAC General Pesticide Rules are listed in the following table:

DATE	TIME	LOCATION
Wednesday, November 2, 2005	3:00 P.M.	Wenatchee Valley Community College Room: Anderson 2047 1300 5 th Street Wenatchee, WA 98801
Wednesday, November 2, 2005	7:00 P.M.	Wenatchee Valley Community College Room: Anderson 2047 1300 5 th Street Wenatchee, WA 98801
Monday, November 7, 2005	7:00 P.M.	Washington State Department of Agriculture 21 North 1 st Avenue Suite 236 Yakima, WA 98902
Monday, November 14, 2005	3:00 P.M.	Washington State Department of Agriculture Second Floor, Room 259 1111 Washington Street SW Olympia, WA 98504- 2560

NEW SECTION

WAC 16-228-1221 Must an applicator notify schools, hospitals, nursing homes and day care centers prior to an application of certain pesticides? (1) Any person applying a pesticide with the signal words "Danger/Poison" must notify a designated manager of an adjacent school, hospital, nursing home or state licensed child or adult day care center in writing, at least two facility business days prior to the start of applications specified in (a) through (c) of this subsection. Facsimile or electronic mail can be used as a method of notification. Pesticides applied within buildings, structures, beehives or other enclosed sites are exempt from this notification requirement. For the purposes of this section, intervening roads or rights of way are considered as contiguous property and do not eliminate the requirement for notification.

This notification applies if:

(a) The application method is by aircraft, airblast sprayer, fumigation or overhead chemigation; and

(b) The application site is contiguous with the property boundary of the school, hospital, nursing home or state licensed day care center; and

(c) The application is within one-half mile of the property boundary of the facility.

(2) If the school, school grounds or day care will not be in use the day of the application and for at least two consecutive days after the application, notification is not required.

(3)(a) Applicators must also notify the responsible person managing the application site at least forty-eight hours prior to the start of the application. The applicator does not need to notify the responsible person if the applicator is a direct employee of that responsible person.

(b) A responsible person other than the applicator may notify the school, hospital, nursing home or day care center if the responsible person has agreed in writing to do so prior to the application. The agreement for notification of a specific facility may be for all applications during a calendar year. Unless a direct employee, the applicator still must notify the responsible person at least two facility business days in advance of each application. Any written agreement with the responsible person that covers a calendar year must be renewed at least annually prior to the first application of the season.

(c) Applicators must retain the responsible person's written agreement for a period of one year. The director shall, upon request in writing, be furnished with the written agreement.

(4) Notification must include the following information:

(a) The product name, active ingredient and EPA registration number of the pesticide(s).

(b) The type of pesticide(s) being applied (i.e., herbicide, insecticide, fungicide, etc.).

(c) The intended date and time of the application.

(d) The statement "Information about the pesticide may be obtained from <http://extoxnet.orst.edu> or the National Pesticide Information Center (1-800-858-7378)."

(e) The contact name and telephone number of the applicator or responsible person.

(5) If an application must be rescheduled, the facility must be contacted no later than the date the initial application in the written notice was scheduled. The facility shall be notified by the applicator or responsible person, as designated in subsection (3)(b) of this section, of the new date and time of the intended application. The notification requirement of subsection (1) of this section shall be considered as met. Notification for rescheduling must be in writing.

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1010 What are the definitions that apply to this chapter? The definitions in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Agricultural commodity" means any plant, or part of a plant, or animal, or animal product, produced by a person (including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons) primarily for sale, consumption, propagation, or other use by people or animals.

(2) "Authorized agent" is any individual who is authorized to act on behalf of a certified applicator for the purpose of purchasing pesticides.

(3) "Bait box" for rodenticides is a box constructed of durable metal, wood, plastic, or other treated material. It shall be designed to hold rodent bait securely, allow rodents to enter and leave, and prevent unauthorized individuals and nonpest domestic animals from gaining access to the bait. Baits placed in industrial, commercial or other areas that are accessible to the public shall be contained in tamper resistant bait boxes. Fragile materials are unacceptable.

(4) "Bait station" may be any location where baits are placed to allow target pests to gain access to the bait.

(5) "Blossoming plants" means:

(a) When there are five or more open blooms per square yard on average in a given field; or

(b) When there are one or more open blooms per tree or vine in an orchard or vineyard; or

(c) When there are five or more open weed blooms per square yard on average for the area being measured for groundcover in orchards or vineyards, fence lines, ditch banks, or field, vineyard or orchard edges. This definition shall not apply to plants that are not attractive to bees (e.g., lentils, hops, peas (*Pisum* sp.), pears (second bloom) and potatoes). For the purposes of this definition, "bloom" means a flower head, raceme or spike with one or more open flowers.

(6) "Bulk fertilizer" is a commercial fertilizer, agricultural mineral, or lime, distributed in nonpackaged form.

(7) "Certified applicator" means any individual who is licensed as a commercial pesticide applicator, commercial pesticide operator, public operator, private-commercial applicator, demonstration and research applicator, or certified private applicator, or any other individual who is certified by the director to use or supervise the use of any pesticide which is classified by the EPA as a restricted use pesticide or by the state

as restricted to use by certified applicators only.

(8) "Chemigation" means the application of any substance or combination of substances intended as a pesticide, plant or crop protectant or a system maintenance compound applied with irrigation water.

(9) A "complainant" is defined as a person who has requested an inspection of an area in which a pesticide violation is believed to have occurred.

(10) "Complete wood destroying organism inspection" means inspection for the purpose of determining evidence of infestation, damage, or conducive conditions as part of the transfer, exchange, or refinancing of any structure in Washington state. Complete wood destroying organism inspections must also include any wood destroying organism inspection that is conducted as the result of telephone solicitation by an inspector, pest control, or other business, even if the inspection would fall within the definition of a specific wood destroying organism inspection.

(11) "Controlled disposal site" means any place where solid or liquid waste is disposed of: Provided that the area has been designated as a disposal site for waste materials by the appropriate jurisdictional agency. The site must be fenced, barricaded or otherwise enclosed or attended by some person in charge to control the access of domestic animals, pets, and unauthorized persons.

(12) "Department" means the Washington state department of agriculture.

(13) "Diluent" means a material, liquid or solid, serving to dilute the pesticide product to the application rate for adequate coverage (such as water).

(14) "Director" means the director of the department or a duly authorized representative.

(15) "Dry pesticide" is any granular, pelleted, dust or wettable powder pesticide.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "EPA restricted use pesticide" means any pesticide classified for restricted use by the administrator, EPA.

(18) "Fertilizer" as included in this chapter means any liquid or dry mixed fertilizer, fertilizer material, specialty fertilizer, agricultural mineral, or lime.

(19) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended (61 stat. 163, 7 U.S.C. Sec. 136 et seq.).

(20) "Floor level" means the floor upon which people normally walk--not shelves, ledges, overhead beams, tops of stacked materials, surfaces of equipment, or similar places.

(21) "Food service establishment" means any fixed or mobile restaurant; coffee shop; cafeteria; short order cafe; luncheonette; grill; tearoom; sandwich shop; soda fountain; tavern; bar; cocktail lounge; nightclub; roadside stand; industrial-feeding establishment; retail grocery; retail food market; retail meat market; retail bakery; private, public, or nonprofit organization routinely serving food; catering kitchen; commissary or similar

place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(22) "Fumigant" means any ~~((substance))~~ pesticide product or combination of ~~((substances))~~ products that ~~((produce gas, fumes, vapors, or smoke, and is used to kill pests in some kind of enclosure))~~ is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

(23) "Highly toxic pesticide" for the purpose of this chapter, means any pesticide that conforms to the criteria in 40 C.F.R. Sec. 156.10 for toxicity Category I due to oral, inhalation or dermal toxicity.

(24) "Landscape application" means an application by a certified applicator of any EPA registered pesticide to any exterior landscape plants found around residential property, commercial properties such as apartments or shopping centers, parks, golf courses, schools including nursery schools and licensed day cares, or cemeteries or similar areas. This definition shall not apply to: (a) Applications made by certified private applicators; (b) mosquito abatement, gypsy moth eradication, or similar wide-area pest control programs sponsored by governmental entities; and (c) commercial pesticide applicators making structural applications.

(25) "Person" is defined as any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

(26) A "person aggrieved" by a violation is defined as a person who has reasonable grounds to believe that he or she has been subjected to harm or an unreasonable risk by such a violation.

(27) "Pollen shedding corn" means that stage of growth when ten percent or more of the corn plants in any one quarter portion of the field are showing spike anthers.

(28) "Positive identification" means a photo identification document issued by a U.S. government agency or affiliated jurisdiction (states, tribes, territories). Acceptable photo identification documents are: A driver's license, a passport, a military ID card or an immigration green card. Exception: Nonphoto identification documents may be allowed for religious groups that prohibit members from having their picture taken. In this case, two forms of identification are required, one of which must be a government issued document with a signature (e.g., Social Security card). Other nonphoto identification must identify the holder by name and address (e.g., utility bill).

(29) "Private applicator" means a certified applicator who uses or is in direct supervision of the use of any pesticide classified by the EPA or the director as a restricted use pesticide for the purposes of producing any agricultural commodity and for any associated noncrop application on land owned or rented by the private applicator or the applicator's employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of

another person.

(30) "Private-commercial applicator" means a certified applicator who uses or supervises the use of any pesticide classified by the EPA or the director as a restricted use pesticide for purposes other than the production of any agricultural commodity on lands owned or rented by the applicator or the applicator's employer.

(31) "Responsible person" means an individual who has authority over or control of the property site such as the owner, manager or lessee.

(32) "Specific wood destroying organism inspection" means an inspection of a structure for purposes of identifying or verifying evidence of an infestation of wood destroying organisms prior to pest management activities.

~~((+32+))~~ (33) "State restricted use pesticide" means any pesticide determined to be a restricted use pesticide by the director under the authority of chapters 17.21 and 15.58 RCW.

~~((+33+))~~ (34) "Structural pest inspector" means any individual who performs the service of conducting a complete wood destroying organism inspection or a specific wood destroying organism inspection.

~~((+34+))~~ (35) "Unreasonable adverse effects on the environment" means any unreasonable risk to people or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide, or as otherwise determined by the director.

~~((+35+))~~ (36) "Waste pesticide" is any pesticide formulation which cannot be used according to label directions in Washington state because of cancellation or suspension of its federal or state registration, or deterioration of the product or its label, and any pesticide formulation whose active ingredients are not clearly identifiable because of label deterioration or because the pesticide is not stored in its original container.